

1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF GEORGIA
3 ATLANTA DIVISION

4 DONNA CURLING, ET AL.,)
5)
6 PLAINTIFFS,)
7) DOCKET NO. 1:17-CV-2989-AT
8 -vs-)
9)
10 BRAD RAFFENSPERGER, ET AL.,)
11)
12 DEFENDANTS.)

13 **TRANSCRIPT OF TELEPHONE CONFERENCE PROCEEDINGS**

14 **BEFORE THE HONORABLE AMY TOTENBERG**

15 **UNITED STATES DISTRICT JUDGE**

16 **JANUARY 17, 2020**

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23 PENNY PRITTY COUDRIET, RMR, CRR
24 OFFICIAL COURT REPORTER
25 UNITED STATES DISTRICT COURT
ATLANTA, GEORGIA

A P P E A R A N C E S:

ON BEHALF OF THE PLAINTIFFS: DONNA CURLING, DONNA PRICE, JEFFREY SCHOENBERG:

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FOR THE DEFENDANTS FULTON COUNTY:

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OFFICE OF THE FULTON COUNTY ATTORNEY (VIA TELEPHONE)

1 COURTROOM DEPUTY CLERK: Good morning everyone. We're
2 here for the teleconference in the case of *Curling vs.*
3 *Raffensperger*, Civil Action Number 1:17-CV-2989.

4 Beginning with the Curling plaintiffs, will counsel make
5 your appearance for the record.

6 MS. KAISER: David Cross and Mary Kaiser with Morrison &
7 Foerster on behalf of Curling plaintiffs.

8 MR. SPARKS: Adam Sparks from Krevolin & Horst, also on
9 behalf of Curling plaintiffs.

10 COURTROOM DEPUTY CLERK: Thank you. Coalition.

11 MR. McGUIRE: Robert McGuire and I'm also joined by Cary
12 Ichter, Bruce Brown and Marilyn Marks for the Coalition
13 plaintiffs.

14 COURTROOM DEPUTY CLERK: State of Georgia.

15 MR. RUSSO: Vincent Russo, State of Georgia, Robbins
16 firm. I have with me Josh Belinfante, Bryan Tyson and Carey
17 Miller.

18 COURTROOM DEPUTY CLERK: Thank you. Fulton County.

19 MS. BURWELL: Kate Burwell, Cheryl Ringer and David
20 Lowman.

21 COURTROOM DEPUTY CLERK: Thank you.

22 We are having this taken down by a court reporter,
23 please state your name prior to speaking. This is not our normal
24 court reporter, so please be cognizant of that.

25 Judge.

1 THE COURT: Good morning.

2 This is the first time we've really tried this because
3 we had to have a new audio system placed in the court for phone
4 conferences or for being able to hear and participate with plug-in
5 witnesses in the latter part of the summer and we just haven't had
6 an occasion to use it. That's the good part of the new year. The
7 bad part of the new year is we don't know how it really works.

8 As I advised counsel, there were a number of members of
9 the press who asked to be present and it was the only way I
10 thought was reasonable under the circumstances. So I don't know
11 who is press and who is not because we also have members -- some
12 folks from our court who are attending who may be interns or law
13 clerks. But we have at least one, two, three, four, five, and I
14 believe two of them probably are an associate of the court.

15 And if at any point you cannot hear, obviously please
16 flag that.

17 How is it going so far, can you hear me clearly?

18 UNIDENTIFIED SPEAKER: Yes, ma'am, at least the
19 (unintelligible) can.

20 THE COURT: I want to remind you to identify yourself
21 before you speak each time. Ms. Welch is covering a trial for
22 Judge Story, so we have a different court reporter today who
23 doesn't necessarily also recognize your voices as quickly; a great
24 court reporter, though, but just doesn't recognize your voices.

25 You all asked for this conference to -- for two

1 purposes, and I have another one or two purposes, things I wanted
2 to talk to you about as well.

3 Is that somebody who is joining or who got cut off?

4 (No response)

5 THE COURT: Well, whatever.

6 So the state filed a proposed -- in response to the
7 request for a hearing and the two different items that were put
8 on, one being basically what's the schedule of rollout of the new
9 system, and we don't see -- we're having trouble seeing it and you
10 not getting information.

11 Another one was what was the fall -- associated back, we
12 don't see actually any plans for the fallback plan in the event
13 the state's not ready.

14 And finally, also the issue of what is the -- the state
15 was very concerned that it's still having to preserve the voting
16 machines from all the counties and assist in the storage, and that
17 they have not gotten a sample from the plaintiffs as to what is
18 the -- what are the numbers or way they want to select the -- a
19 sample of voting machines, DRE voting machines that is, so that
20 the rest of them can be disposed of.

21 The flip of that is the plaintiff saying that they have
22 been persistently refused the information that they require in
23 order to identify the sample.

24 Does that fairly characterize the items that you all
25 wanted to talk about?

1 MR. RUSSO: Yes, ma'am. Vincent Russo. Yes, ma'am,
2 that does.

3 MR. ICHTER: Your Honor, this is Cary Ichter.

4 We also were hoping to get some guidance from the Court
5 during the course of the status conference on the subject of some
6 discovery that the Coalition plaintiffs wish to take on the
7 subject of implementation and the status of the default backup
8 system.

9 We understand that there's been a report from the state
10 with respect to that, but over the course of the past three weeks
11 or so we have been attempting to engage in some discovery in order
12 to gain some information both from the Secretary of State's office
13 and from Cobb County on the subject of implementation and on the
14 subject of the backup plan. And we've been told that we can have
15 none of it because discovery is not currently ongoing.

16 So during the course of the call, we're hoping to get
17 some guidance with respect to that.

18 THE COURT: Okay.

19 MR. MCGUIRE: Your Honor, this is Robert McGuire for the
20 Coalition plaintiffs.

21 We have one other I guess I would characterize it as a
22 housekeeping request, but perhaps it's not exactly that. As your
23 Honor knows, our fee claim reply is due today. And our team has
24 been pretty absorbed in preparing for this conference as the Court
25 is aware because of our filing yesterday, so we would like to make

1 an oral motion, if possible, to just extend our deadline until
2 Tuesday, which is the next business day, rather than have it be
3 due today.

4 And I sent an e-mail out last night to confer with
5 opposing counsel, and I haven't had a chance to hear back from any
6 of the defendants, so I don't know what is their position. But
7 it's just a very short weekend extension, so our hope is that the
8 Court will extend us that.

9 THE COURT: That's fine, I'll extend it.

10 MR. CROSS: Your Honor, this is David Cross. Just for
11 equity, can we have that for both?

12 THE COURT: Yes. I do not think it will make a
13 difference. There are many other things on my plate at the
14 moment. Thank you.

15 MR. CROSS: I imagine that's right. Thank you, your
16 Honor.

17 THE COURT: And, as I said, I had some other items to
18 discuss with you, but I'm going to defer for a moment in
19 identifying them because I want to see how long it takes to deal
20 with the items that we've already addressed.

21 So what's -- I know that it seems to be of great import
22 to the state to deal with this question of being able to dispose
23 of the DRE machines. And I know it's been a consistent concern of
24 the plaintiffs, on the other hands, to be able to review the
25 machines. And then there is also the associated question always

1 when we talk about this, which is, you know, is it essential or
2 not. And I remain concerned about that issue as well, which is
3 really basically having to do with the status of the case, but I'm
4 going to just put a pin on that for now.

5 And I went back and read the transcript of the last
6 hearing, and I've gone back and looked at other materials as well
7 as the ones that you submitted in your argument. And I well
8 understand what the Government wants to proceed with and I -- and
9 I understand the basis about it. I do have to say, again, that
10 originally, you know, the state represented all the machines were
11 going to be preserved in the early fall or late summer, and that
12 was a clear representation in the documents provided. I'm not
13 trying to make you do that, we're trying to find a solution.

14 I do find it objectionable, I want to just say, that --
15 I think it's Mr. Harvey, I don't want to in any way slam
16 Mr. Harvey because it might be another member of the state --
17 Secretary of State's staff who basically said that the whole
18 reason they screwed up for the first four months was because of
19 the judge had delayed them. And I have no conceivable notion what
20 that was about. And I really -- you know, I don't think that's a
21 helpful way of engendering compliance with the Court's orders or
22 moving yourselves forward. And I don't know what was the
23 misperception but I don't -- I would not like to see it again.

24 So is there something that was of particular concern
25 that defense counsel know that Mr. Harvey or whoever else had

1 indicated that to him was referring to?

2 MR. TYSON: And, your Honor, this is Bryan Tyson.

3 I believe those -- that statement was in some notes that
4 were not really identified in Ms. Mark's exhibit, and we are not
5 exactly aware what was going on with that particular
6 representation. We can work on that and see, but I'm not really
7 sure where -- I see on the 6996 where that statement appears, but
8 I'm not aware of the specifics of what was actually communicated
9 on that call.

10 THE COURT: And from the notes of that same -- one of
11 the same calls, this was October 30th, was the question provided:
12 Can we keep equipment? And, yes, but you'll have to destroy them
13 and pay for that on your own. We are willing to take the
14 equipment and destroy it for free, which I assume is practice --
15 what the state would plan to potentially do if -- once this is
16 worked out. Is that right?

17 MR. TYSON: Your Honor --

18 THE COURT: I know you can't vouch for the notes, but
19 I'm just trying to understand, is that in fact the plan?

20 MR. TYSON: Yes, your Honor. This is Bryan Tyson again.

21 I mean, the plan is we are never going to use these
22 machines again. They have a recyclable value and the state has an
23 existing vendor that handles these types of electronic disposal
24 issues and decommissioning issues for the state. And so the end
25 game for the state, if we're authorized to do so, is to have that

1 vendor impose their normal processes for electronics disposal and,
2 you know, recovering anything of value from them in that process,
3 that's our preferred approach.

4 THE COURT: So let me ask the plaintiffs this about the
5 sample. I know Mr. Woods would like to have them -- the most
6 perfect statistical sample possible. I don't know whether that's
7 all so simple. I can see that the election return reports that
8 are used and they were in the record before for Fulton County with
9 respect to the 2018 and 2017 off-year election, and I presume that
10 they're used on every election, is that your understanding or is
11 that -- I mean, these were used not just for Fulton County but
12 there was one for Charlton and -- is that your understanding?

13 MS. KAISER: Your Honor, Mary Kaiser for the Curling
14 plaintiffs.

15 Yes, that is our understanding, that these sheets --

16 THE COURT: And is your issue that you don't have them
17 for any time past the Governor's race on November 8 of 2018, that
18 that's the last ones that you have?

19 MS. KAISER: No, your Honor. Those are the last ones
20 that we have only for DeKalb and Cobb Counties, we have never been
21 provided the recap sheets for the remaining counties.

22 THE COURT: How come I have one for Charlton then? That
23 wasn't in DeKalb.

24 MS. KAISER: I believe that was an attachment to the
25 defendant's filing, your Honor.

1 THE COURT: I see. So is that information that you're
2 looking for, those returns?

3 MS. KAISER: Yes, your Honor.

4 THE COURT: All right.

5 MR. MCGUIRE: Your Honor.

6 THE COURT: Yes.

7 MR. MCGUIRE: Pardon me, your Honor, this is Robert
8 McGuire for the Coalition side.

9 Our information needs are similar but not exactly the
10 same as the Curling plaintiffs. So we're -- we're looking for a
11 different subset of machines and information about machines in
12 order to be able to determine which ones we need to see. We're
13 not looking to build a representative sample as they are, we are
14 looking to identify machines that we want based on anomalies that
15 occurred in polling places.

16 So we need the same information as the Curling
17 plaintiffs and a little bit of unique information as well which
18 the defendants have all been aware of for like a year and a half
19 in order to identify the machines we want. But I just wanted
20 to -- sometimes our differing approaches to this discovery gets
21 sort of mixed together, and I just want to be clear we're actually
22 seeking a slightly different methodology, seeking to use a
23 slightly different methodology that requires slightly different
24 information.

25 THE COURT: All right. Well, who is speaking about this

1 for the state?

2 MR. TYSON: Your Honor, this is Bryan Tyson. I'll take
3 the initial cut at this and maybe help with some of the context.

4 First of all, I think it might be helpful just in case
5 it was not clear, the state has not destroyed any machines that
6 had been used in elections. We are holding all of those in a
7 warehouse that is secure, it is where they -- under security
8 measures, all that kind of thing.

9 The machines are -- as far as the storage, I know
10 Mr. McGuire referenced finding particular machines, they are being
11 stored by county as I understand it but they are not being stored
12 necessarily in serial number order or something along that line.
13 They're in a -- kind of a container setup by county, so we know
14 where county units are but not necessarily what particular serial
15 numbers are in a particular county, so I wanted to get that piece
16 of context.

17 For the information that's been requested by the Curling
18 plaintiffs about the statistical sample, as you indicated we
19 attached the recap sheets. The way those are stored, they're
20 provided to the state at the conclusion of each election as part
21 of a packet of information from each county that is then placed in
22 a file folder for each county for each election.

23 So, for example, the November 2018 election there will
24 be 159 file folders that will contain a variety of sheets related
25 to the election, including the DRE recap sheet and the daily logs

1 for the early voting machines. As you can imagine with the size
2 of counties, those file folders go from a half inch or so thick up
3 to more than a foot thick worth of paper that is included
4 depending on the size of the county. And each precinct will have
5 a DRE recap sheet. And we know there's over 3,000 precincts in
6 the state. And then each DRE unit used for early voting will have
7 its own daily action recap sheet.

8 So in terms of what would be necessary to assemble the
9 information, we would have to have Secretary of State staff go
10 through each folder for each election and pull out the DRE recap
11 sheets and the daily access sheet, assemble those, scan them.
12 We're talking probably 4- to 5,000 pieces of paper per election.

13 And if we're talking about that for a statewide
14 election -- I went and pulled the list -- since 2016, which is the
15 request to get the information, there have been eight statewide
16 elections. So for the 159 counties, we're talking about 1,272
17 files -- file folders they would have to physically go through.
18 In addition we have had over that time 24 non-statewide elections
19 and an unknown number of county and municipal elections on top of
20 that.

21 In terms of where those files are located, the 2018 and
22 2019 files are in the Secretary's office, they were being prepared
23 to be shipped to the Georgia archives. Anything prior to 2018 the
24 state is going to have to go get that from the archives, have them
25 delivered to the state and then have people go through that.

1 All in all, I guess what we're talking about I guess is
2 40- or 50,000 pieces of paper that would then have to be entered
3 into some kind of database in order to determine what the last
4 election each DRE by serial number was used. So that's kind of
5 from a context perspective where we are.

6 If we're just doing November 2018, that is not as heavy
7 of a list, we still have the pull staff to do that. But if we're
8 going to be pulling each statewide election or every election
9 going back to 2016, that's an incredibly burdensome process.

10 MS. KAISER: Your Honor, this is Mary Kaiser for the
11 Curling plaintiffs.

12 First of all, we're willing to forego information about
13 the non-statewide elections and only focus on the eight statewide
14 elections since November of 2016.

15 Secondly, you know, our expert, Dr. Halderman, believes
16 that this information may exist within the GEMS database.
17 Unfortunately he's out of the country and is not able to look in
18 the GEMS database himself to see. But we know that the GEMS
19 database has a sealed machine ID, and if that is the same thing as
20 the machine serial code, this information may exist electronically
21 in the GEMS database. And we would at least like to hear from the
22 state defendants whether they have gone and looked to see if that
23 information exists electronically.

24 MR. MCGUIRE: Your Honor, adding to that -- Robert
25 McGuire -- we actually agree that this information, at least the

1 information that we need that is on recap sheets, is available in
2 the GEMS databases and we communicated that to the defendants as
3 early as -- as recently as May of 2018, we gave them detailed
4 instructions how to extract the information they need from the
5 GEMS databases.

6 Now the Court gave us some GEMS databases from the three
7 prior elections back in November -- the November '18. We
8 basically just need CDs from the GEMS databases updated and we can
9 generate all this information for ourselves, or the state can
10 produce it consistent with the instructions we've already provided
11 to them for over a year and a half. We just haven't encountered
12 cooperation. We want to be able to move forward, but the state is
13 not giving us what we need to do it.

14 THE COURT: Just clarify for me what you're saying that
15 you need from them in order -- from the GEMS database for you to
16 be able to identify this.

17 MR. McGUIRE: So from the Coalition plaintiff's
18 perspective, our discovery is going to be focused on anomalies
19 that are known to have occurred in various precincts. For
20 example --

21 THE COURT: I understand that. I understand what your
22 approach is. Don't go over that again. Just tell me what you
23 need in terms of when you're saying that you -- that you believe
24 that it's -- for whatever reason believe that also that they
25 can -- it can be extracted from the state GEMS database, the

1 question of what machines were used and their ID.

2 MR. McGUIRE: The information we need is to know what
3 DREs were used in which elections in which polling places and that
4 information is in the databases.

5 THE COURT: And that one you think is in the DRE, in the
6 GEMS database, is that what you just said?

7 MR. McGUIRE: Yes, your Honor.

8 THE COURT: And you have -- you all have reviewed that
9 so you have a relatively high degree of confidence in that
10 statement?

11 MR. McGUIRE: We do. I mean, we sent them instructions
12 for running the report that we believe we need back in 2018.

13 THE COURT: And then if I take the -- one wrinkle is
14 that you wanted to look at the machines and the Curling plaintiffs
15 maintain that basically you might not be able to see if it
16 wasn't -- if the machine has been used since 2018, then you might
17 not be able to see the data that you're interested in that you
18 think is the anomaly from 2018 unless that machine has never been
19 used again. So then you're looking -- at least for Mr. Woods, and
20 I know he's not your expert, he's looking to do a sample of both
21 those that have been used again and those which have not been used
22 again.

23 What is the -- I'm not clear what the approach of your
24 clients would be.

25 MR. McGUIRE: Well, I think we are -- our goal is to

1 identify the machines that were used in the areas where there were
2 anomalies. And then once we have that list of machines, to look
3 at those machines in particular. And obviously a forensic analyst
4 who would conduct that evaluation would determine whether there's
5 recoverable information on it. We wouldn't want to prejudge that,
6 but our initial screen, which would reduce their preservation
7 burden, is simply to identify the very small subset of machines we
8 actually want to look at. And then without prejudging whether the
9 information on there has been destroyed or is recoverable, we
10 would then want to look at those particular machines.

11 But given that the state's goal is to reduce their
12 preservation burden, our initial pass at it is to select a small
13 subset, but we want to look at -- in our view that frees them up
14 from their burden with respect to the remainder of the universe.

15 THE COURT: Mr. Tyson, is there any reason why the state
16 has not been willing to, or maybe I'm assuming that it hasn't been
17 and you are willing to, provide the runs on the state DRE -- for
18 the -- in the state GEMS system for the -- looking for the
19 information that's been outlined by Mr. McGuire and to some extent
20 also counsel for plaintiffs?

21 MR. TYSON: Your Honor, this is Bryan Tyson.

22 Again, I don't think we have an objection. Our concern
23 is -- again, I know we put a pin in the jurisdictional question,
24 but this is a lot of work for something that's moot, number one.

25 But in terms of the GEMS databases, I apologize, I have

1 not heard from the plaintiff at all that this was a possible route
2 for obtaining the information that they wanted. And if they want
3 to go about that route, I don't think we have any problem using
4 that approach if that's something that they can do. I have not
5 previously seen instructions about how to extract information, nor
6 have they identified it in the e-mail correspondence back and
7 forth that I have seen, but I don't think we would have a problem
8 approaching that if the Court finds this is still a live issue as
9 to the DREs.

10 MS. KAISER: Your Honor, this is Ms. Kaiser for the
11 Curling plaintiffs.

12 You know, we would just like to point out the defendants
13 know exactly what information that we're looking for and have
14 known for a long time.

15 THE COURT: All right. I know that it's predictable, I
16 know that you say that. I'm not saying that you don't. I'm just
17 trying -- you all asked for me to resolve this but -- and I
18 appreciate that there is a breakdown in communication and that's
19 why we're here today. And it's not useful for me to at this point
20 point fingers. It's not productive for any of the parties.

21 But I want to just make sure the record is really clear
22 what you're asking for because, Ms. Kaiser, you indicated that
23 you're not 100 percent sure that it will, in fact, work, this will
24 work, and you haven't been able to get in touch with
25 Dr. Halderman.

1 On the other hand, Mr. McGuire seems to indicate
2 that they're confident enough that they're willing to go that
3 route. Is that a fair description?

4 MS. KAISER: Yes, your Honor. And just to be perfectly
5 clear, the information that we're seeking is the same as the
6 Coalition plaintiffs in terms of we just need the last election in
7 which the DRE machine was used and the precinct in which the
8 machine was used. So we also believe this information exists in
9 the GEMS database, and it sounds like the Coalition plaintiffs
10 have even more confidence than we do, so we are willing to go that
11 route and think that's a workable solution.

12 MR. TYSON: Your Honor, this is Bryan Tyson.

13 Again, just one question I think we have is what are we
14 talking about in terms of a timeline here? Because as
15 Mr. Sterling's declaration made clear, part of our delivery
16 challenges relate to the capture and storage and we've now gotten
17 our first bill for storage of the DREs and it's going to be a
18 continuing cost. Are we talking a week to get this information?
19 I guess that's one thing I'm unclear about, is how long it will
20 take to get the information that the plaintiffs need.

21 THE COURT: Well, you know, in the original filing the
22 state provided about the storage of these things, it wasn't a
23 limited time issue and it was just a money and you knew it was
24 going to be storage, that's fine. But I thought that what they
25 were saying is you would run it from the state system rather than

1 from any individual machines. Is that the understanding
2 Mr. McGuire and Ms. Kaiser have?

3 MR. MCGUIRE: Your Honor, this is Robert McGuire.

4 We're talking about running, of course, on the GEMS
5 database, that could either happen on a state system or they could
6 provide us through the GEMS database under the protective order if
7 they want to and we could run it ourselves and generate those
8 numbers. But the information is in the databases so, you know,
9 who runs it isn't of particular concern to us. We're happy to do
10 it ourselves if that spares them any burden.

11 THE COURT: Well, it doesn't seem like it would be that
12 complicated, but I have no idea. I mean, Mr. Tyson, that -- and
13 the question of how long it's going to take your folks to do and
14 whether you want them -- that's a segregateable duty that can be
15 handled in a few days. I mean, it is still a run and I think that
16 I will take Ms. Kaiser's word that they -- or, I guess, one or the
17 other of them who said that they had provided instructions about
18 how they would suggest it be done or you can have them run it.

19 MR. TYSON: I mean, your Honor, I think from our
20 perspective they've had the 2018 databases for months now. I
21 mean, we're fine with them running it, we can get everything to
22 them, I guess. But I don't -- I guess I'm still at a little bit
23 of a loss to understand what exactly the sequence is that somebody
24 runs the report of what election by serial number or machine ID
25 was used, that goes to the plaintiffs, and then they develop a

1 sample, how long are we talking with that?

2 THE COURT: First of all, before we get to the sample,
3 let me -- it sounds like, though, that it's 2018 and what other
4 years are the plaintiffs seeking, because the GEMS database may
5 not be -- have the information for all the 2019 elections that are
6 off-year elections?

7 MR. MCGUIRE: Your Honor, this is Robert McGuire.

8 We want some of the earlier databases, too, so -- some
9 machines were not used in later elections that were used in prior
10 elections, and those may well be machines on which there were
11 anomalies, that might be why they weren't reused, so they would
12 actually be useful sources of discovery.

13 THE COURT: For what years are we talking about?

14 MR. MCGUIRE: Well, the hacking that has been
15 identified occurred in -- was identified in 2016, so I think from
16 2016 on would be ideal. And since these are just CDs that we can
17 load and run the reports for the various years, it would be pretty
18 ministerial to do it from any number of databases.

19 THE COURT: Well, so, if you already have the 2018
20 database and I -- what you're looking for, then, is the 2016 and
21 2017 databases on CD, is that what you're saying?

22 MR. MCGUIRE: Well, yes, your Honor. 2016, '17 and '19
23 would be great.

24 MR. TYSON: Your Honor, this is Bryan Tyson.

25 And I determined there were nine elections in 2019,

1 there were six -- seven -- or six elections in 2017. Which
2 elections from 2017, 2019 and 2016 is the Coalition asking for?

3 MR. MCGUIRE: Your Honor, I can identify -- we can
4 circle back to the state defendants and identify a smaller amount
5 of elections, we could pick four that we have, you know,
6 independent reports of anomalies and just request those. I'm
7 happy to work with them off-line on this. We don't need to take
8 the Court's time for it if in principle they agree to provide us
9 what we need. I mean, we could tell them a smaller subset and
10 just do it by e-mail after the call.

11 MR. TYSON: Your Honor, this is Bryan Tyson.

12 My only hesitation with that is that, as we've seen,
13 trying to do e-mail after a conversation tends to not work very
14 well because things tend to change. So from our perspective we
15 would like to go ahead and nail that down while we're all here,
16 which elections do you want, is it just statewide, is it a
17 particular one? Can we identify those while we're here and get
18 that clear.

19 THE COURT: Is plaintiffs' counsel prepared to do that?

20 MR. MCGUIRE: Here on the call? I would have to go
21 back -- it's not in the set of notes that I have ready for this
22 discussion, so I would have to go back and confer with Coalition
23 about the exact elections that we're interested in. I assume the
24 Lieutenant Governor's race would be one we would be very
25 interested in.

1 THE COURT: I don't want to do it on a piece meal basis
2 at this moment.

3 Ms. Kaiser, are you prepared to address that?

4 MS. KAISER: Your Honor, we're willing to just take the
5 statewide elections for those years, 2016, 2017 and 2019.

6 THE COURT: Okay.

7 MR. TYSON: And, your Honor, this is Bryan Tyson.

8 There were no statewide elections in 2019 and 2017. So
9 the 2016 statewide elections are four elections. The -- I
10 guess -- again, I want to understand what we're looking for.

11 MS. KAISER: We would like the GEMS database for 2016
12 that has the data from the four statewide elections for 2016 for
13 all counties in Georgia.

14 THE COURT: Well, I'll tell you what I'm going to do, I
15 agree with Mr. Tyson that I don't really want to keep on doing
16 this forever but we're going to move on, we're going to end up
17 taking a break towards the end so you can do whatever calls y'all
18 need and talking amongst yourselves and then we're going to nail
19 this down.

20 MR. TYSON: Thank you, your Honor. This is Bryan Tyson.

21 And, again, I want to make sure that everyone is clear
22 that once we do the analysis of the -- where the plaintiffs
23 conduct the analysis of the GEMS databases and determine the
24 machines, that then we're talking a whole different process to
25 actually go and locate those machines within the containers. In

1 some of the units -- you say I want these hundred serial numbers
2 in Fulton County, well, there are 3,000 DREs from Fulton County
3 sitting there not in a serial number order. So we're still in a
4 situation of trying to get the physical machines, but I want to
5 make sure we're clear the sequence of what's happening here in
6 terms of what the plaintiffs are seeking.

7 THE COURT: What sort of -- I had heard before what the
8 plaintiffs have indicated that it would be several hundred but not
9 more than several hundred. Has that estimate changed? You can
10 address that later as well, but I want you to be prepared to
11 address that.

12 And I'm still kind of confused for the Curling
13 plaintiffs, Ms. Kaiser, is that the affidavit of Mr. Woods made it
14 very clear that he -- that he wanted to have -- make sure that he
15 had some DREs that hadn't been used again. So if you get a 2016
16 DRE and it's been used in 2018, he seemed to be worried about it
17 being -- and Dr. Halderman seemed to be worried about it being --
18 basically the memory being wiped as to the preceding --
19 overridden. So I just -- I can't resolve that right this second,
20 but if we're going to take a 15- or 20-minute break at the
21 conclusion here, you have to keep -- and we're going down this
22 line of approach, then I think you need to be prepared to address
23 that even if you need to take a five-minute break now so that
24 somebody will go call and begin to -- in your team to talk to
25 whoever they need to talk to.

1 MS. KAISER: Your Honor, this is Ms. Kaiser. Thank you.

2 Our understanding is that our information that we're
3 seeking from the plaintiffs, we can identify machines that were
4 used in 2016 and were not then reused in later elections, and so
5 they would still have -- they would not have been overwritten,
6 they would have the data from the --

7 THE COURT: All right. So you think that when you have
8 all -- the information from all four -- three or four times, that
9 you're going to be able to do that, you can compare it?

10 MS. KAISER: Yes, your Honor.

11 MR. TYSON: Your Honor, this is Bryan Tyson.

12 One other component of this is there still are machines
13 subject to the litigation hold in this case that have not been
14 used that are being held by DeKalb and Fulton and I believe Cobb
15 that have not been used. And so if there's a subset we're looking
16 for that has not been used, those are already -- they're still
17 segregated, we still know exactly where they are, those are still
18 easily identifiable.

19 THE COURT: Great.

20 MR. MCGUIRE: Your Honor.

21 THE COURT: Yes. Who is talking?

22 MR. MCGUIRE: This is Robert McGuire for Coalition
23 plaintiffs. If the purpose of, you know, taking a break is to
24 accommodate us, I actually can give you the four elections that we
25 would be interested in now, if you're ready, if you want me to.

1 THE COURT: I want to make sure that Ms. Kaiser's ready
2 to be talking about this.

3 MR. MCGUIRE: Okay. We can wait for her.

4 THE COURT: Ms. Kaiser, are you going to be ready to
5 talk about this or -- we can finish this subject off, I'm great
6 with that if you're both ready?

7 MS. KAISER: We're ready, your Honor.

8 THE COURT: All right. That's wonderful.

9 So, Mr. McGuire, go for it.

10 MR. MCGUIRE: Sure. Thank you.

11 So the four elections we would be interested in getting
12 this information for from the GEMS database are November of 2016,
13 both of the CD Sixth elections in 2017 and the 2018 primary. And
14 we already have the November 2018 databases from the earlier
15 discovery period in November 2018.

16 MS. KAISER: Your Honor, this is Ms. Kaiser for the
17 Curling plaintiffs.

18 As I said, we would like the data for the four statewide
19 elections in 2016. And we believe there was actually a statewide
20 election in 2017, the special election for the Ossoff/Handel race
21 in 2017, so we would like to include that statewide election from
22 2017 as well.

23 MR. TYSON: Your Honor, I believe the Congressional
24 District Sixth race with Ossoff was just a congressional district
25 in 2017, but those are included in Mr. McGuire's.

1 So I have the November 2016 General Election, the two
2 Congressional District Sixth elections in 2017, the 2018 General
3 Primary Election, and then the primary and runoff statewide in
4 2016 and the Presidential Preference Primary in 2016.

5 THE COURT: Has Mr. Tyson summarized correctly the
6 requests in total?

7 MR. MCGUIRE: From our perspective, your Honor, yes.
8 From the Coalition's perspective, yes.

9 THE COURT: That's Mr. McGuire speaking?

10 MR. MCGUIRE: Yes. I'm sorry, your Honor, yes.

11 THE COURT: What about from your perspective,
12 Ms. Kaiser?

13 MS. KAISER: Your Honor, I just want to make sure we do
14 want to include that Ossoff election from 2017, even if it was not
15 statewide. I'm sorry, I missed whether Mr. Tyson included that in
16 his summary.

17 MR. TYSON: Your Honor, this is Bryan Tyson.

18 Yes, the Offsoff/Handel race was Congressional District
19 Sixth elections held in 2017, and those are on the list that
20 Mr. McGuire had provided.

21 MS. KAISER: This is Ms. Kaiser, your Honor.

22 Then that list represents what we would like as well.
23 Thank you.

24 THE COURT: And, Mr. McGuire and Ms. Kaiser, do you have
25 the list of all the machines that are being held for Fulton,

1 DeKalb and Cobb that are already being -- have been held back?

2 MR. McGUIRE: We may -- this is Robert McGuire.

3 I believe we do, and I will go back and double-check
4 that. Obviously those machines will also show up in the databases
5 if they've been used, so we'll be able to quickly -- once we're
6 able to identify the machines we want, we'll cross-reference it
7 against that holdback list.

8 THE COURT: Ms. Kaiser, do you know that, whether you
9 have the list?

10 MS. KAISER: Your Honor, I don't know off the top of my
11 head. We can look as soon as we get off the call.

12 THE COURT: Well, I would just point out to you this:
13 If you want to use machines that haven't been used after, I don't
14 know, the 2017 Ossoff election, I believe they ended up being held
15 back, it would be preferable, to the extent they're from those
16 counties, I think they're likely separately segregated, maybe
17 they're not, and it would be easier to find, if finding the
18 machines is an issue.

19 Mr. Tyson, do you know whether they're separately being
20 stored or am I just assuming that?

21 MR. TYSON: I'm sorry, your Honor, this is Bryan Tyson.

22 Yes, those -- currently the machines that were
23 segregated are still at the county locations. The counties have
24 been asking us to come get them on the state side, and we have
25 said we're not doing anything with them yet until we get further

1 directions. So those are already segregated and are being stored
2 in the counties.

3 THE COURT: Okay. So to -- at the point you're through
4 with this I think that -- I say this to the plaintiffs. To the
5 extent you have not identified machines that obviously will be
6 helpful to the state to know and to -- so they can proceed.

7 How long is Dr. Halderman, if he's going to be doing
8 some of the work, going to be out of the country and not available
9 to you, plaintiffs?

10 MR. CROSS: This is David Cross. Dr. Halderman is back
11 on the 27th. He's reachable by phone, but he doesn't have access
12 to the databases.

13 THE COURT: I understand that, but I'm just thinking
14 about their desire to not be paying for the storage and to move
15 forward with this task.

16 And he basically -- if he's not going to be back until
17 the 27th, he's not going to be coming back and starting the
18 evening of the 27th to start working, doing data analysis, and he
19 already indicated in his affidavit that he hadn't gotten a chance
20 to look at various things because of other obligations.

21 Well, I think you need to talk with him and -- as well
22 as whoever else the Coalition is talking with so you are able
23 once -- to determine how long once you get this additional
24 information it is before you're able to give the sample so that we
25 can get a timeline here because they can't -- if it's going to

1 take two days to run it, that's fine. If it's going to take ten
2 days, that's more into the storage business. They obviously don't
3 want to be running around looking for machines at the worse of
4 times in March.

5 MR. CROSS: Your Honor, this is David Cross.

6 One thing that occurs to me that we may be able to at
7 least try to try to move this forward is we did have the GEMS
8 database set up here in our office. We took that down and locked
9 it up. I can see if we can set that back up under the conditions
10 we had before. Candidly, I don't think those conditions are
11 necessary, but we won't get into that at this point.

12 But Dr. Woods is located here in -- Nathan's here, yeah.
13 Our statistical expert is here, so let me see if we can set up
14 what we have in our office and bring Dr. Woods to our office, and
15 he may be able to look at the databases himself without
16 Dr. Halderman's help to figure that out, at least to get it going
17 while Dr. Halderman's away, so we'll try that.

18 MR. McGUIRE: Your Honor, this is Robert McGuire.

19 We would respectfully request that those onerous
20 conditions not be imposed on the databases at this time. They
21 were unnecessary before and they will make it very difficult for
22 us in a cost effective way to accomplish what we need to
23 accomplish.

24 We can certainly honor a protective order and the
25 confidentiality requirements of it, but the exceptional -- the

1 exceptional protection that was put in place previously proved to
2 be completely unnecessary. And, you know, it would just impose
3 needless cost on my clients if we had to replicate those again,
4 travel to DC to do this in a secure room. You know, we have a lot
5 of confidential information that they have designated confidential
6 and we have handled that without any problem whatsoever to date.
7 We think that the protective order should be sufficient to govern
8 these CDs. And our people need to be able to work with them in
9 Atlanta. So that would be our requests.

10 THE COURT: Are you saying that you -- you keep them
11 confined to the offices of the lawyers, though?

12 MR. MCGUIRE: Of course, your Honor. Yes, we would do
13 that.

14 MR. CROSS: We would do the same, your Honor. This is
15 David Cross.

16 THE COURT: Mr. Tyson, do you have any objection?

17 MR. TYSON: Your Honor, this is Bryan Tyson. I think
18 part of our concern here is we're kind of getting into the
19 discovery as opposed to preservation. I thought we were having a
20 conversations about what machines need to be preserved, not doing
21 an analysis of various other things.

22 THE COURT: Well, I think they're still saying if they
23 have to run the data and compare. I don't know that we're dealing
24 with discovery, but I can get that clarified. But I think they
25 were saying that it would be -- Mr. McGuire is saying they have

1 law offices in Atlanta that they could run this data to from their
2 perspective. And if they have to go to Washington, go up there to
3 Mr. Cross's office, take turns, do it from -- and it's much more
4 expensive and less efficient.

5 MR. TYSON: And, your Honor, this is Bryan Tyson again.

6 I think if we could have some clarity about who is going
7 to be doing this. I think we're agnostic as to the location where
8 it takes place. If it's in a lawyer's office and subject to a
9 protective order, that's fine. But we would like to have some
10 clarity just in terms of who are the experts that are going to be
11 doing this analysis.

12 We know it's Dr. Woods for the Curling plaintiffs. If
13 the Coalition plaintiffs can identify who is going to be doing
14 that, I think that will give us some comfort as well.

15 THE COURT: Mr. McGuire, do you know that? Are you able
16 to respond to that?

17 MR. MCGUIRE: I mean, I can tell you that this is a
18 fairly ministerial task, we can have lawyers do it. We're in a
19 position where people are concerned about legal fees and things
20 like that, but we can have lawyers who are -- who are on the case
21 do it. Ideally we would have people who sign the confidentiality
22 doing it, whether it's paralegals or assistants doing it. But,
23 you know, if they want it to be done by senior personnel --

24 THE COURT: I don't think they're saying that it has to
25 be senior personnel but it has to be under the supervision of

1 senior personnel. And I don't know whether you have -- I mean,
2 that's -- obviously the level of efficiency in managing the
3 database is going to be somebody who is skilled in that, but you
4 haven't identified that person.

5 So I heard them saying, okay, that's fine, but you need
6 to do -- who is going to be responsible for ensuring security and
7 who are the -- who are the designated people with the skills and
8 also the -- and understanding their confidentiality obligations
9 who are going to be working on it?

10 MR. MCGUIRE: Your Honor, Robert McGuire here. My
11 understanding is that Mr. Ichter's office on our side has
12 facilities that could house this and that he would be able to be
13 the attorney on the ground there supervising any work on the
14 databases.

15 THE COURT: All right. Well, that sounds like that's
16 fine, but you need to go ahead and identify who is going to be
17 heading up the actual hands-on data work, okay?

18 MR. MCGUIRE: Yes, your Honor.

19 THE COURT: And the expert or quasi expert who is going
20 to be doing it. I mean, I've worked with a lot of data and I've
21 worked with people who are graduate students and I've worked with
22 people over the course of my career and people who are -- who are
23 just tech geeks who would know how to do that, but I think you at
24 least -- we have to know who they are and who is going to be
25 supervising them.

1 MR. MCGUIRE: Your Honor, this is Robert McGuire.

2 I can definitely provide that information. Do you want
3 me to do it on the course of this call or is it something that I
4 just simply need to share with the opposing counsel when we decide
5 who that is?

6 I will just say, these are reports that are typically
7 run by non-expert personnel in clerk's offices. So it's not --
8 it's not a particularly --

9 THE COURT: All right. Let me just be pointblank. You
10 cannot just have the person who you think is spectacular who is
11 running the PR for the Coalition running it. That's not going to
12 happen. That's what their concern is. So you have to have
13 somebody who is at least a step removed from that.

14 MR. MCGUIRE: Your Honor, this is Robert McGuire.

15 I understand. We will identify someone who can do that.
16 It will be someone who is an expert or quasi expert, as you said.
17 I --

18 THE COURT: I don't mean that they would be expert in
19 this court -- as an expert in this court, but you've got to have
20 somebody who is -- I think I've made clear, who is capable and
21 going to provide -- do this in a way that's efficient and
22 responsive to Mr. Ichter and is not -- also going to keep the
23 confidentiality obligations. I don't know who that is. You can
24 basically summarize who the person is, or persons are, all right?

25 MR. MCGUIRE: Yes, your Honor.

1 THE COURT: Okay. Then just in terms of the calendar
2 here, Mr. Tyson's going -- how long do you think it's going to
3 take to get the CDs?

4 MR. TYSON: Your Honor, this is Bryan Tyson.

5 We checked during the interim here and that is at the
6 archives, so we're going to have to contact the Georgia Archives,
7 but we hope it will not be a very long process. Obviously Monday
8 is a state holiday but we'll move as expeditiously as we can.

9 THE COURT: All right. Well, I'm going to presume
10 you're going to be able to do this by the end of next week, is
11 that fair?

12 MR. TYSON: Yes, your Honor. Bryan Tyson. That is
13 reasonable and I think that's accomplishable for us as a goal.

14 THE COURT: And they'll get it by Friday, whatever time
15 on Friday, Friday afternoon. And if they have to come pick it up,
16 somebody will pick it up, or obviously if you have to Fed Ex it to
17 Mr. Cross's office, you will send it off on Friday, no later than
18 Friday.

19 MR. TYSON: Yes, your Honor.

20 THE COURT: And then I don't know -- I think that the --
21 how long it's going to take for the plaintiffs to review it. Is
22 it going to take you all about a week, is that --

23 MR. McGUIRE: Your Honor, this is Robert McGuire.

24 A week ought to be sufficient for us on the Coalition
25 side.

1 MS. KAISER: Your Honor, this is Ms. Kaiser for Curling
2 plaintiffs.

3 We'll confirm with Dr. Woods, but we will ask if a week
4 is sufficient as well.

5 THE COURT: Well, somebody in your group needs to call
6 Mr. Woods, Dr. Woods right now, all right, or try to send him a
7 text or something else, because I don't want to have this coming
8 back again. I am sick of it, you are sick of it.

9 MS. KAISER: Understood, your Honor. We'll reach out
10 right now.

11 MR. TYSON: Your Honor, this is Bryan Tyson.

12 I just want to be clear that the analysis that's being
13 conducted for these databases is for the purposes of them
14 identifying the machines and the sample, not for kind of general
15 discovery, mining through GEMS databases and those kinds of things
16 as well.

17 THE COURT: That is the purpose.

18 MR. TYSON: Thank you.

19 THE COURT: Is there anything else in connection -- so
20 they have through Friday and then if Mr. Cross doesn't get it
21 until Monday, or Saturday, then the state would get it the
22 following -- an identification the following Monday.

23 MR. MCGUIRE: Yes, your Honor. This is Robert McGuire.

24 That will work for the Coalition plaintiffs, your Honor.

25 A week from when we receive the CDs we can get back to the state

1 with a list of the machines that we believe require further
2 discovery, and the rest we will be able to release, as far as the
3 DRE machines go.

4 And we do still believe the state is going to be
5 preserving the memory cards that came out of all the various
6 machines since those are essentially costless to preserve. And
7 they haven't discussed these specifically, but that should get us
8 going on this DRE discovery and should allow for us to free them
9 up from our request of preservation of things that we don't need.

10 THE COURT: I think the memory cards, I assume they
11 don't take that much space, so they should be preserved. And we
12 can revisit after this any other larger items that need to be
13 preserved or not, but let's just get through this.

14 So by the 24th you're going to get the CDs, that's the
15 24th of January. And by Monday the 3rd you're going to -- the
16 plaintiffs will provide an identification of which machines they
17 would need. And right now someone from the Curling plaintiffs is
18 trying to reach Dr. Woods to confirm the doability of that.

19 MS. KAISER: Your Honor, this is Ms. Kaiser.

20 We were able to reach Dr. Woods and his team and we can
21 commit to that timeline as well.

22 THE COURT: All right. Excellent.

23 All right. So let me ask a question about the pending
24 rule regarding usage of the fallback of a -- basically a paper
25 ballot that is scanned. I think the state provided that or one

1 party or another provided that. When was that initially basically
2 presented as a proposed rule to the Board of Elections, State
3 Board of Elections that is?

4 MR. RUSSO: Your Honor, this is Vincent Russo.

5 I believe it was originally presented to the State Board
6 on the 17th of December. It was posted on the 20th, and that
7 triggered the comment period, which I believe closes on the 22nd
8 of January, which is when the State Election Board will meet to
9 consider approving the proposed rules.

10 THE COURT: And have there been any -- do you know
11 whether there have been any volume of comments about the proposed
12 rule, this particular one?

13 MR. RUSSO: Your Honor, I've not -- I do not know the
14 answer to that question. I mean, we can check. I do know there
15 have been comments provided, but these proposed rules touch on a
16 number of areas. So with regard to the emergency paper ballots
17 specifically, I'm not sure. I believe the plaintiffs, though,
18 might have referenced some comments that they submitted in their
19 response.

20 THE COURT: Mr. Russo, does the state regard this as
21 their sort of -- their fallback -- your fallback arrangement in
22 the event particular -- whether statewide or on a particular
23 precinct or a particular county that this is -- that there's a
24 significant problem with the BMDs?

25 MR. RUSSO: Yes, your Honor, the state does view this as

1 the fallback if there's an emergency situation that makes
2 utilizing the electronic ballot markers impracticable or not
3 possible.

4 THE COURT: You have enough scanners at this point that
5 are actually on place or you can buy if you see that you're
6 getting squeezed?

7 MR. RUSSO: I'm sorry, your Honor, you --

8 THE COURT: Are there -- I don't know what the volume of
9 the scanner buy is. Do you have enough scanners so that if, in
10 fact, let's say half of DeKalb is not functioning in some way,
11 that there are scanners --

12 MR. RUSSO: Yes.

13 THE COURT: -- that will accommodate this?

14 MR. RUSSO: Yes, your Honor. The optical scanners, the
15 Dominion optical scanners read both the bar code ballots and the
16 hand-marked paper ballots with the same programming. So those
17 scanners would be used in an emergency backup situation, the same
18 as if there was not an emergency situation, and the state has
19 enough.

20 THE COURT: And have -- I know this is not what you
21 really want to be doing but do you have -- do you have -- is there
22 enough paper and containers and devices or will there be any
23 training provided as to precinct-level people as well as the
24 personnel from each county running as to these options and things
25 they have to plan for in the event of the failure of the machines?

1 MR. RUSSO: Your Honor. Yes, your Honor.

2 The state -- there is a mobile ballot printer that the
3 counties are then able to use at the polling places to print
4 additional emergency paper ballots. So there should -- we don't
5 anticipate any issues with not having -- not being able to produce
6 enough backup ballots in the event that they are needed.

7 In terms of the scanners, if there was an emergency
8 situation and they needed to be counted at a central location,
9 that's also a possibility.

10 THE COURT: So let me ask plaintiffs' counsel, I mean,
11 you may not think the plan is sufficient in some regard, but tell
12 me why you're representing to the Court that they do not have a
13 plan. They have a plan that is supposed to be before the State
14 Board of Education -- I'm sorry, State Board of Elections the end
15 of January, so why would that not constitute a plan?

16 MR. RUSSO: Your Honor, this is Vincent Russo. I just
17 want to make one point of clarification because I misspoke. The
18 mobile ballot printers are at the county offices, so paper ballots
19 will be preprinted ahead of time already but the counties will
20 have the ability to print additional ballots using the mobile
21 ballot printer if they need additional emergency ballots.

22 THE COURT: You mean that they would move the mobile
23 ballot printer to particular precincts?

24 MR. RUSSO: No, your Honor. The county would then have
25 to deliver them to the precincts. But the paper ballots are

1 preprinted, so they're supposed to have enough preprinted ballots
2 to begin with, but in the event that there was a situation where
3 they needed additional ballots --

4 THE COURT: I see.

5 MR. RUSSO: -- they can print, they have a mobile ballot
6 printer at the county level. And then -- I apologize for that.

7 THE COURT: That's all right.

8 MR. McGUIRE: Your Honor, this is Robert McGuire. To
9 answer your question about why we are concerned, first off the
10 Court ordered them to put in place a statewide fallback plan, is
11 our understanding, and what they've done is they have basically
12 pointed to two, you know, updated versions of election rules that
13 are -- require local precinct level decisions about whether it's
14 impracticable to use their machine. And they -- they've limited
15 them really to malfunctions that -- you know, like electrical
16 outages and waiting times. And these are rules that, you know,
17 have -- comparable rules have existed prior to this Court's order,
18 so we don't believe this is a good-faith effort to satisfy the
19 Court's order to do a statewide backup plan involving paper
20 ballots.

21 But even taking what they pointed the Court to at face
22 value, it won't operate -- it won't work to rely on scanning paper
23 ballots in the absence of an election management system which is
24 an integral part of all of the components that -- in this system.
25 And the scanners won't work without the EMS and the EMS has not

1 been rolled out according to schedule. So the reasons we put into
2 our filing of the status report, it appears that -- it appears
3 very risky to assume that they'll accomplish that.

4 So I think what they've done is they haven't put in
5 place a statewide backup plan but rather they've kind of put in
6 place a very decentralized set of decisions based on limited
7 criteria that allow people to use paper ballots, and they're still
8 relying upon scanners that require a part of the system that
9 hasn't been delivered. So --

10 THE COURT: You mean the scanner or do you mean
11 something else that hasn't been delivered?

12 MR. MCGUIRE: The election management system.

13 THE COURT: And you think that the EMS system is
14 necessary for the scanner to function?

15 MR. MCGUIRE: It is according to the demanding documents
16 that have been filed in connection with the Georgia configuration
17 of the system. The EMS is the sort of the brains of the
18 operation, it's what -- it totals the numbers, it's what allows
19 the scanners to understand, you know, what parts of the paper
20 that's running through it correspond to what voter selections.
21 These are not off-the-shelf scanners, they're Dominion scanners
22 and they require Dominion software and the election management
23 system is key to that.

24 So without that, without a guarantee that that's in
25 place there's no way to count on even being able to use the

1 scanners. Our concern is that this plan doesn't -- it appears to
2 be just crossing your fingers and hoping that we meet our
3 schedule.

4 MR. CROSS: Your Honor, this is David Cross. I agree
5 with what Mr. McGuire said. I think the context is important to
6 keep in mind, which is the -- the impetus for your Honor's order
7 coming out of the preliminary injunction motions with respect to
8 the new system was the rollout of a statewide system that is
9 entirely new in virtually every respect that the defendants have
10 represented it.

11 So what they're pointing to, as Mr. McGuire noted, is
12 they've got a rule that really just replicates what's long been
13 standing in the law, which is if you have some sort of disaster
14 that renders the machines impracticable or unusable, then the
15 local election officials have authority to figure out what to do
16 so that the election can continue in that precinct or that county,
17 whatever is affected.

18 That is not a plan, it is certainly not a statewide plan
19 and it is nothing remotely close to what we thought your Honor had
20 in mind, which was if the statewide rollout looks like it is not
21 going to work, and we believe where we are there can be no
22 question it's not going to work, putting that aside for a moment,
23 there's got to be a plan that says here is what we're going to do
24 at a statewide level, this is the instructions that are given and
25 this is how it's going to work. And Mr. McGuire has noted just a

1 couple of examples of how there is no plan, for example.

2 What happens with the ballots, right? Let's say they do
3 hand-marked paper ballots, they print them out -- they get the
4 paper, how are they going to count them, right, without the EMS,
5 which they're saying they expect to roll out by February 1, they
6 have not given any hard deadline, they expect February 1? And
7 then what about the scanners?

8 So what really needs to happen is a good-faith effort
9 that says if this is not going to be implemented statewide or if
10 there are half the counties or some number of counties that fall
11 through the cracks, there is a specific step-by-step plan that
12 says this is how we're going to do this, and that does not exist.

13 At most you would end up with a whole bunch of ad hoc
14 decisions at a local level, people scrambling to figure out county
15 by county, precinct by precinct what to do. I would not call that
16 a plan.

17 MR. BELINFANTE: Your Honor, this is Josh Belinfante.

18 You know, this is part of the problem we've had. If
19 the plaintiffs think we're in contempt of the order, there's a
20 procedural mechanism for them to file. File a motion to hold us
21 in contempt, let's have an evidentiary hearing, not a debate over
22 a teleconference about what is happening and what is not because
23 we will submit what has been represented is simply factually not
24 true.

25 I'm not saying that they are intentionally misleading

1 the Court, I just think we have more information than they do.
2 But this is not the time or place to have this type of discussion,
3 certainly if there's going to be any relief ordered from the
4 Court.

5 MR. ICHTER: Your Honor, this is Cary Ichter.

6 This is exactly why we sought to conduct some discovery
7 on implementation in the backup plan. Mr. Belinfante says we have
8 all the information, you have none of it, you can't confirm any of
9 your suspicions or concerns about what's going to happen when we
10 can't actually implement the Dominion system, so we can go on our
11 merry way and have essentially an election disaster down the road
12 because we don't have a plan and we don't have a system and we
13 haven't been able to take any discovery to monitor whether or not
14 there's been compliance with the Court order.

15 We can't file a motion for contempt with no evidence.
16 What we see -- the information that's been supplied, and we've
17 tried to do some follow-up on it and find out what the actual
18 facts are, and we get stiff-armed.

19 MR. BELINFANTE: This is Josh Belinfante again.

20 There is simply no open discovery. And despite their
21 attempts, the plaintiffs are not some type of court monitor that
22 are there to enforce your order. If they believe we're in
23 contempt -- and they've filed a 22- or 23-page brief citing
24 various open records requests that they've received documents
25 from, so it's not as if they're operating in the dark. If they

1 believe we're in contempt, file away, we will respond. We will
2 have this in an orderly manner based on Rules of Procedure and
3 Rules of Evidence but not an ad hoc demand for discovery when
4 discovery is closed, not e-mail traffic that goes back and forth
5 and almost never fails to contain some accusation of lying or
6 spoliation or something else that is simply not being produced in
7 good faith and makes it impossible to respond in good faith.

8 That's the reason for the communication breakdown.
9 That's the reason why we need a formal process. And the
10 plaintiffs simply have remedies if they think they're available,
11 they just need to take advantage of them.

12 MR. CROSS: Your Honor, this is David Cross, if I may.

13 I guess I'm not sure that I understand Mr. Belinfante's
14 complaint because we actually did file a motion for hearing,
15 that's literally what we filed. And what we would like to do is
16 to have an evidentiary hearing, which is what we articulated in
17 our brief. We understood that your Honor scheduled this status
18 conference for the purpose of getting the status of where things
19 stand, and we assume your Honor will decide what the next
20 procedural step is.

21 I do think Mr. Belinfante's argument highlights the
22 problems, which is there is an information asymmetry and it is
23 because they have declined to provide any information at all. The
24 only thing we can get is through public records, so we have done
25 the best we can. We believe an evidentiary hearing at this point

1 would be productive.

2 The last point I will make, your Honor, there is a
3 singular reason why the communications in this case have gone the
4 way they have since the substitution of counsel, and it is
5 abundantly clear that the other side is under a directive not to
6 cooperate. They don't like when we express concerns about the
7 reliability of the things they say, but look at just what has
8 happened today.

9 THE COURT: All right. I really don't want to go
10 into -- go further in this. I understand your perspective. I
11 don't -- I'm not trying to argue about it, but I don't think it
12 will be helpful in the time that I have for you to basically go
13 over what has happened today. I am capable of sorting that out
14 myself one way or the other, so...

15 MR. CROSS: Thank you, your Honor.

16 THE COURT: Let me -- I understood both parties -- or
17 all three parties sets of views on that, and I will take that into
18 consideration in to how to proceed.

19 You were given a tentative schedule on the BMDs, and it
20 looked like, though, that the servers are -- what is the
21 anticipated schedule for delivery of the servers?

22 MR. RUSSO: Your Honor, this is Vincent Russo.

23 The election management system has -- there's some
24 counties, of course, that already have it because they've run
25 elections and about to be running elections, special elections.

1 The remaining counties, all of the EMSs will be rolled out by
2 February 1st and in place. That is what was included in our
3 filing yesterday, in Mr. Sterling's affidavit. And the ballot --
4 for the ballot building process and getting paper ballots out by
5 February 4th for Uocava purposes we are in line to have that
6 completed. Of course, it's not -- it's for the Presidential
7 Preference Primary, so we know who is on the ballot already and
8 it's not a large ballot.

9 And in regards to the rollout of the BMDs, your Honor,
10 we have -- currently 95 counties are either scheduled or have had
11 their BMDs delivered for the Presidential Preference Primary. The
12 scheduling issue is really just -- counties have to have space to
13 receive the ballot marking devices. They have to have the
14 warehouse ready and some counties still have to have their DREs
15 picked up. Other counties may have space that -- in their
16 warehouse to store both DREs and BMDs. I don't believe that there
17 are a number of counties that have that type of warehousing space.

18 But the process for scheduling is that once the DREs
19 have been picked up, unless the county has adequate space to house
20 the BMDs, the county notifies the state that they're ready to
21 receive the ballot marking devices, and then the delivery is then
22 scheduled.

23 So that's where we're at. The state believes
24 mid-February point to have everything delivered. That would be in
25 plenty of time before the March -- before early voting begins in

1 March. And, you know, there's 95 counties right now that -- I
2 understand that's about 86 percent of the population of the state
3 is covered. So the large counties -- the state prioritized
4 getting them out to the large counties and the counties that have
5 the special elections and then going from there.

6 Additionally, in terms of counties being ready to
7 receive ballots and the logistics around that, as you know, the
8 counties, we have a wide variety of differences in some of these
9 counties in more rural areas of the state. Some counties do not
10 have loading docks at their facilities, which means hand trucks
11 have to be brought down also and used to unload and deliver
12 machines.

13 So there are those logistics that prevent just setting a
14 hard date and, you know, a schedule that I think the plaintiffs
15 are believing needed to be done. This is a fluid schedule but the
16 state is on track.

17 MR. CROSS: Your Honor, this is David Cross.

18 THE COURT: Yes.

19 MR. CROSS: Let's just accept everything -- all the
20 dates that they've put on the table, that those are workable and
21 they're met, it still is just not feasible. And look at what
22 they've represented in the past. I guess the challenge that I
23 have here, your Honor, is twofold:

24 One, it's dis-serving that in their filing they don't
25 actually have a document prepared by the state that says here's

1 our schedule. One would have expected that appended to their
2 filing is here is our schedule, it's on a page, it's on two pages,
3 deadline by deadline, step by step, here's how it's going to
4 happen. Instead we get a narrative that says various expectations
5 and anticipations. This is the most that we've gotten for how
6 this is going to happen.

7 Let's assume their expectations and anticipations
8 actually play out on the timeline they've described, by their own
9 arguments in this case they cannot possibly get this done in an
10 orderly fashion because they're saying by mid-February is the
11 earliest they expect to have the system in place physically there,
12 right? That means the EMS, the scanners, the BMDs, everything.
13 That doesn't include the installation that has to happen when the
14 equipment arrives, it doesn't include the testing that has to
15 happen, all of the logistics that go into this. It doesn't
16 include the training of all these different people on a very new
17 complicated system that includes steps that no one has ever dealt
18 with in the State of Georgia, right, now including two sets of
19 machines for every single voter and paper ballots that they
20 haven't dealt with. And they're telling the Court when
21 Presidential primaries begin in person on March 2nd, they're
22 saying under the best case scenario that these counties will have
23 maybe two weeks to do all of that, to take equipment that's going
24 to show up at their counties in mid-February, with new systems,
25 new software and figure all of that out in two weeks for one of

1 the most important elections in our country. And yet when we're
2 before the Court twice before with months to go before elections
3 and the only change we wanted was hand-marked paper ballots, keep
4 all the other equipment, the GEMS system stayed, everything, or at
5 least folding in the new EMS, in 2018 it was keeping GEMS, it was
6 keeping -- they said it couldn't be done, it was too heavy a lift
7 just to swap out paper ballots for DREs and keep every other
8 aspect of their system. Now they want the Court to believe
9 they're going to get this done in two weeks. I just -- I don't
10 know what more to say about it, your Honor. It can't get done.

11 And if we have to file a motion for contempt to get an
12 evidentiary hearing and relief, I suppose we'll do that, but I was
13 hoping not to have to go that route. But we are way beyond
14 anything that anybody can realistically say is going to be a
15 reliable, orderly election in the state.

16 Just last week Chris Harvey responded in e-mail to a
17 county saying he did not know when all the equipment that they
18 were asking about, the EMS, the servers, the BMDs, when it was
19 even going to come to them; couldn't even answer the question of
20 when it was coming.

21 THE COURT: Mr. Russo, it might -- or, Mr. Tyson, I
22 don't know which one of you want to answer this, or
23 Mr. Belinfante: Are you able to provide a more concrete schedule
24 that is not simply based on the affiant's statement? I think it's
25 fine to have an affiant and it's helpful sometimes to be able to

1 understand that there may be other factors and it's helpful to be
2 able to say this is 86 percent of the population, but I don't know
3 what else is remaining to be done, but I'm just trying to look at
4 the -- right now where we're at.

5 And you said something was February 2nd, the EMS you
6 anticipated would be delivered. And I guess February 2nd, I'm
7 just looking at the calendar, is a Sunday. So I'm assuming you're
8 thinking the 3rd, or that it was going to be the 31st?

9 MR. RUSSO: Your Honor, this is Vincent Russo.

10 No, it's February 1st is when the election management
11 system will be completely rolled out. Some counties already have
12 it, of course, and that's -- that's the equivalent of the old
13 GEMS. We're not talking about the ballot marking devices. Every
14 county has had two ballot marking devices for a month or so now --
15 or, excuse me, since October, and those were used for training and
16 demonstrations.

17 THE COURT: What's going to be delivered by the 1st
18 then?

19 MR. RUSSO: That is the election management system,
20 that's the EMS, the new GEMS for lack of a better term.

21 THE COURT: Are you able on the 3rd to provide --
22 basically provide an update -- and let's say the 4th, so that I
23 have one by -- file one with the Court by the 4th as to the status
24 of everything that's been delivered?

25 MR. RUSSO: Yes, your Honor, we can -- so just to be

1 clear, you want a status update on the EMS delivery or on the
2 whole system?

3 THE COURT: On the whole package, yeah, the whole thing.

4 MR. RUSSO: We can give you -- we can do that, we can
5 provide you with an update where we're at on the 4th regarding the
6 whole system.

7 THE COURT: It's fine to have an affidavit, but I would
8 like to have some sort of spreadsheet attached so we know exactly
9 if there are holes, where are the holes, okay?

10 MR. RUSSO: Your Honor, we can do that.

11 MR. CROSS: Your Honor, this is David Cross.

12 If I may briefly, I think that's really helpful and we
13 appreciate your Honor requiring the update. The one thing I do
14 just want to caution is because there's not this statewide
15 hand-marked paper ballot plan we envisioned in place or something
16 that's reliable, I do have a concern the longer we wait the harder
17 it's going to be to get relief.

18 Let's say that February 3rd comes and they're not where
19 they thought they would be -- I mean as of right now there's 65
20 counties that are not even scheduled yet according to what they've
21 filed. They said 94 counties are delivered or are scheduled for
22 delivery for the BMD rollout, which leaves 65 not even on the
23 schedule. But if February 3rd comes and they're woefully behind,
24 what happens then? At that point we are, what, less than a month,
25 with the shortest month of the year, away from in-person voting.

1 They've told us --

2 THE COURT: Well, I don't know whether -- if it's -- the
3 counties that are left behind are smaller counties, it may be less
4 of an issue at some point, though, in terms of trying to think of
5 a centralized option. I don't know. But, I mean, I am -- I'm not
6 the election guarantor here no matter what. I mean, there needs
7 to be a plan, that's what I said. I don't find the plan that's in
8 the new proposed rule as insufficient as you but -- because the
9 superintendent of the county has an ability to take action. Yes,
10 I mean, this is an effort at giving guidance and it's obviously
11 one that a superintendent could work with.

12 There are certainly other things that should be being
13 thought about, and I don't know whether they are or not. And I
14 guess what the defendant is saying, if you don't believe us,
15 then -- there's not enough, then move for contempt, and maybe that
16 is an option. But I would prefer not to go that route. And I
17 would say I prefer for the -- if there's anything else additional
18 in mind, obviously, in plans, I would hope that the state -- the
19 Secretary of State would share that with the plaintiffs so that we
20 don't waste time here because everyone recognizes this is a
21 remarkable undertaking to do this on a statewide basis and there
22 will be glitches, everyone -- and it's fortunate at one level it's
23 a Presidential Primary and not the November election, but, of
24 course, people's primary choices are important to them as well.
25 And it is the choice of who -- at least one group of people in one

1 party is putting up for election, and we hope that Georgian's get
2 a meaningful vote and don't end up having frustration and
3 difficulties at the polls. But we know that also this is a very
4 challenging process, and I'm not trying to make it more so.

5 I appreciate the fact that I had the rule shared with
6 me, but I would think it would be important if there are other --
7 I know we have election specialists here. This is a big rollout.
8 And to the extent there are -- come February 4th real expected
9 holes or possible holes, I would have thought that the state would
10 have some other plans that might be beyond the proposed rules that
11 could be shared.

12 I think for me to go through a contempt hearing would be
13 very unfortunate. I'm willing -- if we get to that, I will have
14 to consider whether it's warranted or not, but I would certainly
15 like to avoid that. I mean, in the same vein, I have really
16 sought to avoid having to consume everyone's time with further
17 proceedings that relate to the question of liability in the
18 underlying lawsuit that I have already ruled on in a lengthy order
19 in a preliminary injunction.

20 But the defendants basically, I have to say, you want it
21 both ways; you want the whole thing to be declared moot and at an
22 end and at the same time -- and I have basically, as you have
23 stated, foreclosed discovery for now because I have two issues.
24 One, I have the former -- basically the DRE system, which is not
25 going to be used, but there were other relief issues that were in

1 my order that -- and if the defendant is going to be appealing and
2 thinking still that it wants to challenge this and that there's
3 never been any proof that this is really sufficient to uphold this
4 in the event other relief, then I may end up having to say to you
5 basically, you know, put up or be quiet, and being a more kind
6 version of this, about this, because that's ultimately --
7 if you're saying that the evidence was not sufficient to support
8 the injunction, which has other provisions, then I'm going to have
9 to either, you know, have a -- say I'm giving you seven, eight
10 days to decide whether you want to, in fact, go to an additional
11 trial, a final trial, or you want -- so, I mean, I think it's not
12 a great use of resources, especially at this very delicate time of
13 introduction of a new system, but I don't have a choice because
14 we're just basically going in circles about this.

15 You know, I don't know what has been done about some of
16 these other items. I have tried not to be pushy because I
17 understood the scope of the work being undertaken. But, you know,
18 I think that -- I sent out a request for information regarding
19 what's happening with the audit standards and have been advised
20 that nothing is in process at this point, but maybe it is in
21 process but nothing has been issued at this point, but I certainly
22 want to know about that.

23 And I think everyone -- it's an important issue when you
24 introduce a new electronic system to have an audit process. I
25 think that was the intent. And I thought you all had told me that

1 there would be December -- at the December board meeting that the
2 Board, State Board was going to be considering audit standards.
3 So I'm a little bit -- I don't know. And I, again, have tried not
4 to be pushy about this because these are things that could be
5 shared, and I'm not trying to distract everyone, but I'm expecting
6 good faith implementation of the Court's injunctive relief
7 provisions. And that is also, you know -- when I look at each of
8 the items of injunctive relief that start at page 149, they could
9 be obviously a true update. And some of them they -- we're
10 hearing some about and some we are not.

11 I've got a lot of extremely smart, capable lawyers in
12 front of me and you know how to read pages 149 through the end of
13 the order. So that's the bedeviling posture we're in. And I'm
14 not going to jump for the invitation to have a contempt hearing or
15 jump for the invitation to start screaming about, my God, it's
16 almost February either from the plaintiffs. But, you know, I am
17 going to have to get some information from the state what you're
18 planning to do, and I will issue an order that deals with some of
19 these issues in terms of just the posture of the case and the
20 pending motions, try to give some clarity to it.

21 And I did want to let the state know that I was going to
22 give you sort of a real defined time to tell me what you're going
23 to do about this discussion that we had I think all the way back
24 in the last December hearing. And I know you think it's just moot
25 and that the whole thing is therefore dead. But besides

1 everything else, just to put it out in your mind, that -- I could
2 decide it's not moot, but, you know, you've agreed -- whatever
3 you've agreed, if it's something that the Court can live with
4 or -- because ultimately it's me who has to decide at this
5 juncture, I can always determine that I'm going to close the case
6 with authority for the Court to enforce the provisions of the
7 order, the injunctive order, too. We do that all the time in
8 dissent decrees, and with final decrees as well. And you could
9 appeal that.

10 But if, in fact, there's -- well, there are fact issues
11 still that relate to the evidentiary foundation upon which my
12 relief order relies, I need to know and -- that potentially could
13 be raised in front of the Eleventh Circuit because then I would
14 have to have a concluding proceeding.

15 So there's a lot moving here. I am really trying to
16 move very delicately at the same time because it doesn't matter
17 what I think about the new system itself at this juncture, I want
18 the state to be able to have absolutely a fair shot at being able
19 to do what it thinks is appropriate and efficient in being able to
20 implement the system.

21 And I know the plaintiffs are very anxious, and I
22 understand that, there's certainly good reason to be. There was
23 probably good reason before even in terms of just simply the mere
24 challenge of this rollout. But I do not perceive myself being
25 able to be a complete guarantor of what's going to happen in the

1 next months, next two months before the primary. It's just not
2 feasible, but I can make things -- I can ensure that the
3 expectations I have from the prior order are implemented in a
4 reasonable way.

5 MR. CROSS: Your Honor, this is David Cross.

6 One thing that I think would help on that with respect
7 to the hand-marked paper ballot default plan is getting clarity
8 from the state on what is the plan for actually having paper
9 ballots to mark by hand, because the plan that they have doesn't
10 seem to speak to that.

11 So, for example, if it does turn out that in February
12 they're too far behind with a lot of the counties, and
13 particularly if it were to include some of the bigger counties,
14 how will they have paper ballots ready to go if the BMD printers
15 that they are going to rely on aren't available? We've heard in
16 the past when we were trying to get hand-marked paper ballots that
17 the lead time on that is very long and that they would have to
18 have ballot printers lined up -- I mean, vendors, not physically
19 printers, vendors lined up to do that.

20 So getting some clarity from them on what is the backup
21 plan if they have to go to hand-marked paper ballots would help.

22 THE COURT: Well, I think just simply having an adequate
23 supply -- I know defense counsel has referenced that they do plan
24 to have paper ballots but, of course, it depends on the scope of
25 the problem. So I think it's a reasonable request for

1 information, but I think we ought to wait until they get this
2 equipment out and give them enough time. They're trying to get
3 you the CDs, you're trying to do what you need to do in this time
4 frame also.

5 So does defense -- can defense counsel provide that
6 information by the Wednesday or Thursday of the -- I think it's --
7 I'm sorry, my calendar just went on me. You're providing one
8 piece of information to me about the delivery on the 4th. Do you
9 think by the 5th that you can also provide me the -- what you're
10 thinking about in the event of something more significant is a
11 problem in light of the information you have, what would be a
12 backup plan for getting the paper ballots available, assuming
13 you're going to scan them still because, of course, you could scan
14 them any number of places? Yes, it's a transportation issue and a
15 security issue, but at least we could get them -- make sure that
16 there's a supply.

17 MR. RUSSO: Your Honor, this is Vincent Russo.

18 Just to ensure we understand what you're asking for, you
19 want us to provide information about how many paper ballots will
20 be preprinted in each county by the election or -- I just want to
21 make sure what you're asking us to provide you, we know what it is
22 so we're on the same page.

23 THE COURT: Let me ask, Mr. Cross, what would satisfy
24 you at least concretely because that's a very specific question
25 that defense counsel posed?

1 MR. CROSS: Yes, your Honor. It would help to have
2 concrete numbers on what -- how many paper ballots they will have
3 for each election for each precinct because what we don't want to
4 have happen at any given precinct there are not sufficient ballots
5 for folks to vote.

6 THE COURT: But obviously they could move the ballots,
7 too.

8 MR. CROSS: Sure, and they would have to have a plan for
9 that. I mean, the county --

10 THE COURT: Why don't we just simply -- it's one
11 thing -- that's a whole other level of things. Why don't we just
12 simply say how many the county will have and what is its
13 distribution plan for the paper ballots.

14 MR. CROSS: That's great. Thank you, your Honor.

15 MR. TYSON: Your Honor, this is Bryan Tyson.

16 Before we leave that topic, just so we're all clear, I
17 want to be fully -- appraise everybody of this, that the
18 decision -- just like printing of provisional ballots, the
19 decision on how many ballots to print is generally a county
20 election superintendent's function. There's not a directive from
21 the state that says you must have one ballot for every active
22 voter in your precinct. I think that's what a lot of counties
23 would end up using if they were doing a full hand-marked paper
24 ballot election. But I just want to be clear, it's not like we're
25 going to be able to say Fulton County will have 75,000 or 200,000

1 ballots. We'll get you as much as we can, but I want to be honest
2 about what you expect to see in terms of that response based on
3 who does what on the part of the election process.

4 THE COURT: I understand that. I think that the -- and
5 the problem really is is that everyone's asking you what do you
6 think is a reasonable amount to have given the fact you have a new
7 system where you don't know if everything is going to work
8 necessarily completely smoothly and, in fact, you may end up
9 needing to generate more. But at this juncture, knowing what they
10 do and knowing they're getting into a new system and working with
11 people who have done this before, what would be -- what is a
12 reasonable amount which they should -- you know, obviously get the
13 benefit of also somebody in the state who is working for other
14 people who have rolled out systems which may -- and to have as
15 backup amounts and a distribution system -- basically what they're
16 thinking about how they distribute them, because the thing about
17 it is it's easy to distribute if you -- Fulton County, let's just
18 say Fulton County, and we've got representatives of Fulton County
19 here, they may decide that they want to have some extras that are
20 in North Fulton County, some in south, I mean a central place in
21 the center of the county, I don't know, but I think that might be
22 one way of addressing it when you've got a large county and lots
23 of traffic.

24 But, you know, there are people obviously, and I know
25 this from -- you know, we've heard these great people who came and

1 testified here and who gave -- and who also have given affidavits
2 for both sides, that this is a whole world of expertise about
3 rollouts and this is information available and not to take
4 advantage of it -- and I'm assuming that your contractor has it,
5 they've rolled out the system lots of places, it seems a
6 reasonable thing that can be done that also may be of concrete use
7 to the citizens of Georgia and the counties and the electorate as
8 a whole that is not just for the Court and paper-keeping and
9 dotting one's Is and crossing one's Ts.

10 MR. RUSSO: Yes, your Honor. This is Vincent Russo
11 again.

12 We just want to make sure that you understand and that
13 the folks who are on the line with us understands that the state
14 has been getting equipment out for months now and anticipates a
15 February 14th, 15th, mid-February deadline to have all of the BMDs
16 rolled out and the February 1st deadline to have all of the
17 election management systems rolled out.

18 In regards to printing, we will work on tallying up what
19 each county's superintendent intends to have preprinted for the
20 March Presidential Preference Primary, in addition to what they --
21 if they need to use the mobile ballot printer. That is -- the
22 real reason the state bought those was so that if there was an
23 emergency situation, counties would have the ability to print
24 those at their central facility.

25 THE COURT: All right. But you'll address the

1 distribution issue too?

2 MR. RUSSO: Yes, ma'am.

3 THE COURT: All right. Very good.

4 MR. ICHTER: Your Honor, this is Cary Ichter.

5 It sounds like the one thing that everybody agrees on is
6 that nobody wants there to be a contempt motion or a contempt
7 hearing, but it sounds as though the defendants are saying that
8 the reason that this issue even exists is because of what
9 Mr. Cross referred to as an informational asymmetry. And it seems
10 to me that the way we fix that is by allowing the plaintiffs to
11 conduct some limited discovery on implementation on the backup
12 plan.

13 I have yet to hear anybody explain why it is a bad idea
14 for us to be able to conduct the kind of discovery regarding those
15 important issues that we conduct in every other kind of case and
16 find out --

17 THE COURT: Well, I'll tell you why, the reason is this:
18 These folks are trying to roll out an election system and if they
19 are -- and they also need counsel, and if they are tied up trying
20 to explain anything and everything to plaintiff's counsel at this
21 moment, it is intrusive and it is disruptive and it is not giving
22 them a fair shot.

23 Now, they may -- through fault of their own, no fault of
24 their own or a combination of circumstances, it may be a mess, end
25 up being a mess, but that's on their heads at that point also.

1 I mean, the Court's relationship to the state in terms
2 of allowing the state to run its own election system is one still
3 of deference and absent there being something that goes completely
4 haywire, discriminatory, deprives people of their effective
5 capacity to cast votes in a meaningful way and deprives them of
6 that.

7 And, you know, I've already ruled on that part, but it
8 doesn't mean that I preemptively do that here and open up the
9 process. So I'm going to answer your question, I am not at this
10 juncture going to do that. Now if there's a contempt motion
11 because of something that happens in this process, then I'll have
12 to look at it again. I hope we're not going to be there.

13 I would like to know what's going on with the audit
14 procedures.

15 MR. TYSON: Your Honor, this is Bryan Tyson.

16 I can provide you at least a partial update on the audit
17 procedures and we can get you some more details as we go. As we
18 had indicated previously, the November pilot audit in Cartersville
19 was our first step working with verifying voting and another
20 national organization, that the name is escaping me at the moment,
21 on trying a variety of different options for how you can do
22 audits.

23 The state is going to be conducting an additional test
24 audit in the Senate District 13 special election for Senator
25 Kirk's Senate seat. And the -- Democracy Works is the other

1 organization we were partnered with on the development of the
2 audit.

3 Again, like we explained, we're trying to make sure we
4 get the process workable and appropriate. We'll be doing an
5 additional test on it for Senate District 13 and then we'll be
6 continuing to hone the rule surrounding that, they can be put in
7 place.

8 As the Court is aware we have to have -- it has to be
9 ready to audit the November 2020 elections and expect to be able
10 to audit elections prior to that, but we can also keep you
11 apprised as to how that process continues.

12 THE COURT: So it was Democracy Works and what was the
13 other organization you said that you were working with?

14 MR. TYSON: This is Bryan Tyson.

15 The other organization is Verified Voting.

16 THE COURT: Okay. And do you anticipate being able to
17 provide the specific methodology that you're likely going to use?

18 MR. TYSON: Your Honor, I don't think we're prepared yet
19 just because of the design of the test audit, but the purpose is
20 to conduct several different auditing methods to determine what
21 will work best, so that's still in progress.

22 I don't think we're ready yet to say exactly what the
23 method and process is going to be, that's the purpose of doing an
24 additional test in Senate District 13.

25 THE COURT: Okay. If the state could provide the

1 Court -- I didn't want to have to have this plan -- and maybe
2 you've already done it but the number -- item number one in the
3 Court's order at 149 called for you to provide this information,
4 which was a plan for implementation that addresses errors and
5 discrepancies in the voter registration database and et cetera.

6 MR. TYSON: Yes, your Honor.

7 THE COURT: And have you already provided that to
8 plaintiffs' counsel?

9 MR. TYSON: Yes, your Honor. This is Bryan Tyson.

10 We provided that on January the 3rd, extensive kind of
11 look at the polls and other processes that we've put in place. So
12 we have provided that, developed it and provided it.

13 THE COURT: And tell me what the status of item five was
14 that dealt with the work with your cyber security firm, the
15 formal -- to do an in-depth review and formal assessment of issues
16 relating to the accuracy of the database and exposure. And I have
17 reporters here, so I'm not asking you to tell me the inside
18 details but have -- is that proceeding?

19 MR. TYSON: Your Honor, this is Bryan Tyson.

20 I apologize, I do not know the answer to that sitting
21 here. We will check with the Secretary's office. I know they're
22 aware of their obligations and aware of those requirements in the
23 order.

24 THE COURT: If you would provide an update by the end of
25 the month, that would be most appreciative, all right?

1 MR. TYSON: Yes, your Honor. Should we include that in
2 the February 3rd filing?

3 THE COURT: That's fine. And if some portion of it
4 needs to be for some reason under seal, you can make a motion
5 accordingly. All right?

6 Did I lose you?

7 MR. TYSON: We're here. Yes, your Honor.

8 THE COURT: You heard it? All right.

9 MR. TYSON: Thank you.

10 THE COURT: Is there anything else we need to address at
11 this time?

12 MR. RUSSO: This is Vincent Russo, your Honor.

13 We do not have anything else at this time.

14 THE COURT: Anything else from the plaintiffs? Yes, go
15 ahead.

16 MR. MCGUIRE: This is Robert McGuire for the Coalition
17 plaintiffs. We have nothing further.

18 MR. CROSS: Nothing more for Curling plaintiffs, your
19 Honor. Thank you.

20 THE COURT: Very good. Thank you all and have a very
21 good weekend. Look forward to hearing from you all.

22 (PROCEEDINGS REPORTED WERE CONCLUDED)

23

24

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C E R T I F I C A T E

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA

I do hereby certify that the foregoing pages are a true and correct transcript of the proceedings taken down by me in the case aforesaid.

This the 19th day of January, 2020.

Penny Pritty Coudriet



PENNY PRITTY COUDRIET, RMR, CRR
OFFICIAL COURT REPORTER